

Application No. 10/823,411

Non-final Office Action dated September 10, 2007

Response and Amendment dated December 10, 2007

**Amendments to the Drawings:**

Please replace Figures 10, 25, 26 and 36 with the Replacement Sheets attached hereto.

### **REMARKS**

Applicants have amended the specification on page 27, lines 3-5 and 17, by changing "the body 211" to "the body 214" in order to make the specification consistent with corrections made to the drawings. Applicants also amended the specification on page 32, line 10 to change "Fig. 35" to "Fig. 53A."

Applicants have canceled claims 34-41 and 75-82 and have added new claims 83-95. New claims 83-95 are drawn to the ablating device of Group IV. Support for new claims 83-95 can be found throughout the specification and at, for example, page 30, line 6 to page 33, line 18.

Applicants have amended Figures 10, 25 and 26 to include missing reference numbers and have amended Figure 36 to correct a duplicate reference number.

No new matter enters by these amendments.

### **Objection to the Specification**

The Examiner objects to the specification because there is no element 25 in Figure 10 as discussed on page 24 of the specification. Office action, at page 4. Applicants have revised Figure 10 to include reference number 25.

The Examiner also objects to the specification because there is no element 192 in Figure 25 or 26 as discussed on page 24, lines 23-33. Office action, at page 4. Applicants have revised Figures 25 and 26 to include reference number 196.

The Examiner objects to the specification because "it appears that the reference to Figure 35 should be to one of figure 53A or 538." Office action, at page 4. Applicants have amended the specification on page 32, line 10 to change "Fig. 35" to "Fig. 53A."

In view of the amendments above, Applicants respectfully request withdrawal of these objections.

### **Objection to the Drawings**

The Examiner objects to the drawings because Figure 36 has two different elements 211. Applicants have changed the reference number on Figure 36 for “the body” from 211 to 214. Applicants have also amended the specification as discussed above. In view of the amendments, Applicants respectfully request withdrawal of this objection.

### **Response to Restriction Requirement**

The Examiner required restriction to one of four groups of claims. The Examiner then asserted that because “the instant application has been filed as a continuation of US Patent Application Serial No. 09/507,336, rather than a divisional, the instant application must be drawn to the same invention: a method of delivering energy to ablate tissue.” Office action, at page 4. Accordingly, the Examiner elected the claims of Group I (claims 34-41) and withdrew the remaining claims from consideration (claims 50-54 and 75-82). Applicants respectfully disagree with the Examiner’s election of claims.

It appears that the Examiner may have been applying the Final Rule regarding changes to continuation practice published in the Federal Register on August 21, 2007. Applicants note that the changes to 37 C.F.R. § 1.78 were not in effect on September 10, 2007 when the Examiner issued the present Office action, and are not in effect today due to the issuance of a preliminary injunction. See *SmithKline Beecham Corp. v. Dudas*, No. 1:07-CV-1008 (E.D. Va. Oct. 31, 2007). Applicants are unaware of a requirement that the claims of a continuation application must be drawn to the same invention as the parent application and respectfully request that the Examiner provide support for this requirement stated in the Office action. Applicants’ representative attempted to contact, and will continue to seek a conference with, the Examiner regarding this rejection.

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In response to the requirement for restriction and election, Applicants elect the claims of Group IV, drawn to a device for ablating cardiac tissue. Applicants also request cancellation of claims 34-41 and 75-82 and entry of new claims 83-95 generally drawn to the inventions of Group IV.

Applicants submit that the application is in condition for allowance. Timely notification of allowability is respectfully requested.

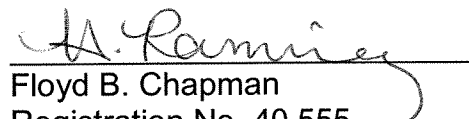
No extension of time is believed necessary for this paper to be considered timely. If any fees, petitions, or requests for extension of time are required in order to enter or consider this paper, enter or consider any of the claims submitted, enter or consider any paper accompanying this paper, or keep this application or the previous application pending, Applicant hereby requests that the petition or request be granted and Applicants' representative hereby authorizes the Commissioner to charge any fees due to Deposit Account No. 50-1129 with reference to Attorney Docket No. 0E-040042US / 82410.0181.

Respectfully submitted,

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Date: December 10, 2007

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